

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Perry Mason, # 10267-021,	) C/A No. 9:11-1655-MBS-BM
	)
Petitioner,	)
	)
vs.	) Order
	)
Kenny Atkinson, Warden,	)
	)
Respondent.	)
	)

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This case is before the Court because of Petitioner's failure to comply with the magistrate judge's Order of July 18, 2011. (ECF No. 5).

A review of the record indicates that the magistrate judge ordered Petitioner to submit items needed to render this case into proper form within twenty days, and specifically informed Petitioner that if he failed to do so, this case would be dismissed *without prejudice*. The mail in which the Order was sent to Petitioner at the address provided when the case was filed has not been returned to the Court, thus it is presumed that Petitioner received the Order, but has neglected to comply with it within the time permitted under the Order. Petitioner's lack of response to the Order indicates an intent to not continue prosecuting this case, and subjects this case to dismissal. *See Fed. R. Civ. P. 41(b)*(district courts may dismiss an action if a Petitioner fails to comply with "any order of the court."); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4<sup>th</sup> Cir. 1982)(court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.<sup>1</sup>

IT IS SO ORDERED.

/s/ Margaret B. Seymour  
United States District Judge

August 19, 2011

Columbia, South Carolina

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>1</sup> Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Petitioner wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk’s Office in Columbia (**901 Richland Street, Columbia, South Carolina 29201**).